

(H. B. 2505)

**(No. 101-2015)**

(Approved July 1, 2015)

## **AN ACT**

To amend Section 3 of Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act”; amend Section 2 of Act No. 116-2013, as amended; amend Sections 4020.01, 4020.02, and 4120.01 and add a new Subtitle DDD to Act No. 1-2011, as amended, in order to make reference to the specific tax the revenues of which shall be covered into the Dedicated Sales Tax Fund, clarify the tax rates and surtaxes applicable to the sales and use tax and the value-added tax, and amend Section 33 of Act No. 72-2015, in order to increase the number of legislators designated to the Consumption Tax Transformation Alternatives Commission (CATIC, Spanish acronym); among other things.

### **STATEMENT OF MOTIVES**

In order to meet the immediate financial challenges faced by the Government of the Commonwealth of Puerto Rico (ELA, Spanish acronym) at this historical juncture, this Administration recently increased the sales and use tax through March 31, 2016, as a transitional measure towards the new Value-added Tax or the tax resulting from legislation recommended in the Report rendered by the Consumption Tax Transformation Alternatives Commission (CATIC, Spanish acronym), which shall take effect on April 1, 2016. In accordance with Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act,” the first revenues of the sales and used tax codified in Subtitle D of Act No. 1-2011, known as the “Internal Revenue Code of 2011,” shall be covered into the Dedicated Sales Tax Fund (FIA, Spanish acronym) up to certain amount, for the payment of bonds and other obligations issued by the Puerto Rico Sales Tax Financing Corporation

(COFINA, Spanish acronym). According to said Act, the funds covered into FIA shall neither be deposited in the Treasury of Puerto Rico, constitute resources available to ELA, nor be available for use by the Secretary of the Treasury.

With such a background, the purpose of this measure is to make technical amendments to Act No. 91-2006, as amended, Act No. 116-2013, as amended, and Act No. 1-2011, as amended, to make reference to the specific tax the revenues of which shall be covered into FIA and to provide that the replacement of the sales and use tax by the value-added tax as COFINA's source of repayment meets the requirements of Section 5(c) of Act No. 91-2006, as amended. This bill also seeks to clarify the tax rates and surtaxes applicable to the sales and use tax and the new Value-added Tax. These amendments are necessary to achieve the goal of the recently adopted legislation, which is to immediately generate additional revenues for the Central Government.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 3 of Act No. 91-2006, as amended, known as the "Dedicated Sales Tax Fund Act," is hereby amended to read as follows:

"Section 3.- Creation of the Special Fund.-

A special fund is hereby created, to be known as the Fondo de Interés Apremiante (hereinafter, 'FIA'), whose name in English shall be 'Dedicated Sales Tax Fund,' to be administered by the GDB. FIA and all the funds deposited therein on the effective date of this Act and all the future funds that must be deposited in FIA pursuant to the provisions of this Act are hereby transferred to, and shall be the property of COFINA. This transfer is made in exchange for, and in consideration of COFINA's commitment to pay, or establish mechanisms to pay, all or part of the extraconstitutional debt outstanding as of June 30, 2006, and the accrued interest thereon, and for the other purposes established in Section 2(b) of

this Act, with the net proceeds of the bond issues or funds and resources available to COFINA.

FIA shall be funded each fiscal year from the following sources, the proceeds of which shall be directly deposited in FIA at the time of receipt and shall not be deposited in the Treasury of Puerto Rico, nor shall these constitute resources available to the Commonwealth of Puerto Rico, nor shall these be available for use by the Secretary of the Treasury of the Commonwealth of Puerto Rico (hereinafter, the ‘Secretary’):

(a) The first revenues of the sales and use tax (hereinafter, the ‘Tax’) established in Sections 4020.01 and 4020.02 of Subtitle D of Act No. 1-2011, as amended, known as the ‘Internal Revenue Code for a New Puerto Rico,’ (hereinafter, the ‘Code’) up to the following amount; provided, that once the value-added tax provided in Section 4120.01 of Subtitle DD of the Code or the tax resulting from legislation recommended by the Commission created under Section 33 of Act No. 72-2015 takes effect, any reference made in this Act to the sales and use tax, including the term defined as ‘tax,’ shall be deemed to be substituted for the value-added tax provided in Section 4120.01 of Subtitle DD of the Code or the tax resulting from legislation recommended by the Commission created under Section 33 of Act No. 72-2015, which shall constitute a collateral or a tax similar or comparable to the sales and use tax in accordance with Section 5(c) of Act No. 91-2006, as amended:

- (i) ...
- (ii) ...
- (b) ...

For purposes of Section 3(a) of this Act, there shall be no Fixed Income for Fiscal Year 2006-2007. The Fixed Income for each fiscal year shall be equal to the sum of the Original Fixed Income and the Additional Fixed Income. The

Original Fixed Income for Fiscal Year 2007-2008 shall be one hundred eighty-five million dollars (\$185,000,000). The Original Fixed Income for each subsequent fiscal year shall be equal to the Original Fixed Income for the previous fiscal year plus four percent (4%), up to a maximum of one billion, eight hundred and fifty million dollars (\$1,850,000,000). The Additional Fixed Income for Fiscal Years 2006-2007, 2007-2008, and 2008-2009 shall be equal to zero (0) dollars. The Additional Fixed Income for fiscal year 2009-2010 shall be equal to three hundred and fifty million, one hundred sixty-eight thousand dollars (\$350,168,000). The Additional Fixed Income for each subsequent fiscal year shall be equal to the Additional Fixed Income for the previous fiscal year plus four percent (4%), up to the fiscal year in which the sum of the Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred and fifty million dollars (\$1,850,000,000) ('Peak Year'). The Additional Fixed Income for each fiscal year following the Peak Year shall be reduced to the amount necessary so that the sum of the Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred and fifty million dollars (\$1,850,000,000). The Fixed Income for any fiscal year shall be funded from the first revenues of the Tax.”

Section 2.- Section 2 of Act No. 116-2013, as amended, is hereby amended to read as follows:

“Section 3.- Creation of the Special Fund.-

A special fund is hereby created, to be known as the Fondo de Interés Apremiante (hereinafter, 'FIA'), whose name in English shall be 'Dedicated Sales Tax Fund,' to be administered by the GDB. FIA and all the funds deposited therein on the effective date of this Act and all the future funds that must be deposited in FIA pursuant to the provisions of this Act are hereby transferred to, and shall be the property of COFINA. This transfer is made in exchange for, and in consideration of COFINA's commitment to pay, or establish mechanisms to pay,

all or part of the extraconstitutional debt outstanding as of June 30, 2006, and the accrued interest thereon, and for the other purposes established in Section 2(b) of this Act, with the net proceeds of the bond issues or funds and resources available to COFINA.

FIA shall be funded each fiscal year from the following sources, the proceeds of which shall be directly deposited in FIA at the time of receipt and shall not be deposited in the Treasury of Puerto Rico, nor shall these constitute resources available to the Commonwealth of Puerto Rico, nor shall these be available for use by the Secretary of the Treasury of the Commonwealth of Puerto Rico (hereinafter, the ‘Secretary’):

(a) The first revenues of the sales and use tax (hereinafter, the ‘Tax’) established in Sections 4020.01 and 4020.02 of Subtitle D of Act No. 1-2011, as amended, known as the ‘Internal Revenue Code for a New Puerto Rico,’ (hereinafter, the ‘Code’) up to the following amount; provided, that once the value-added tax provided in Section 4120.01 of Subtitle DD of the Code or the tax resulting from legislation recommended by the Commission created under Section 33 of Act No. 72-2015 takes effect, any reference made in this Act to the sales and use tax, including the term defined as ‘tax,’ shall be deemed to be substituted for the value-added tax provided in Section 4120.01 of Subtitle DD of the Code or the tax resulting from legislation recommended by the Commission created under Section 33 of Act No. 72-2015, which shall constitute a collateral or a tax similar or comparable to the sales and use tax in accordance with Section 5(c) of Act No. 91-2006, as amended:

- (i) ...
- (ii) ...
- (b) ...

For purposes of Section 3(a) of this Act, there shall be no Fixed Income for Fiscal Year 2006-2007. The Fixed Income for each fiscal year, between Fiscal Year 2007-2008 and Fiscal Year 2012-2013, shall be equal to the sum of the Original Fixed Income and the Additional Fixed Income. The Original Fixed Income for Fiscal Year 2013-2014 and every subsequent fiscal year shall be the sum of the Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income. The Original Fixed Income for Fiscal Year 2007-2008 shall be one hundred eighty-five million dollars (\$185,000,000). The Original Fixed Income for each subsequent fiscal year shall be equal to the Original Fixed Income for the previous fiscal year plus four percent (4%), up to a maximum of one billion, eight hundred and fifty million dollars (\$1,850,000,000). The Additional Fixed Income for Fiscal Years 2006-2007, 2007-2008, and 2008-2009 shall be equal to zero (0) dollars. The Additional Fixed Income for Fiscal Year 2009-2010 shall be equal to three hundred fifty million, one hundred sixty-eight thousand dollars (\$350,168,000). The Additional Fixed Income for each subsequent fiscal year shall be equal to the Additional Fixed Income for the previous fiscal year plus four percent (4%), up to the fiscal year in which the sum of the Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred fifty million dollars (\$1,850,000,000) ('Peak Year'). The Additional Fixed Income for each fiscal year following the Peak Year shall be reduced to the amount necessary so that the sum of the Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred fifty million dollars (\$1,850,000,000). The Supplementary Fixed Income for Fiscal Year 2013-2014 shall be one hundred seventy-five million, five hundred sixty-three thousand fourteen dollars (\$175,563,014). The Supplementary Fixed Income for each subsequent fiscal year shall be equal to the Supplementary Fixed Income for the previous fiscal year plus four percent (4%), up to the fiscal year in which the sum

of the Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income equals two billion fifty-five million dollars (\$2,055,000,000) ('Peak Supplementary Year'). The Supplementary Fixed Income for each fiscal year following the Peak Supplementary Year shall be reduced to the amount necessary so that the sum of the Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income equals two billion, fifty-five million dollars (\$2,055,000,000). The Fixed Income for any fiscal year shall be funded from the first revenues of the Tax.”

Section 3.- Section 4020.01 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4020.01.- Sales Tax.-

(a) ...

(b) The tax rate shall be five point five percent (5.5%) of the sales price of the taxable item and bundled transactions; provided, that effective on February 1, 2014 through March 31, 2016, the tax rate shall be six percent (6%).”

Section 4.- Section 4020.02 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4020.02.- Use tax.-

(a) ...

(b) ...

(c) ...

(d) The tax rate applicable to the sales price of the taxable item and bundled transactions shall be:

(1) ...

(2) six percent (6%) through March 31, 2016.”

Section 5.- Section 4120.01 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4120.01.- Value-Added Tax.-

(a) ...

(b) Value-Added Tax Rate.-

(1) In General.- Except as otherwise provided in this Section, six percent (6%).

(2) ...

(c) ...”

Section 6.- A new Subtitle DDD is hereby added to Act No. 1-2011, as amended, to read as follows:

“SUBTITLE DDD – CONSUMPTION SURTAX

CHAPTER 1 – IMPOSITION

Section 4210.01.- Consumption Surtax - Sales Tax

(a) There shall be levied, collected, and paid, at the rates established in this Section and in addition to the sales and use tax established in Subtitle D of this Code, a tax on every transaction involving the sale of a taxable item in Puerto Rico carried out after June 30, 2015, but before April 1, 2016. The application of the tax shall be subject to the exemptions provided in Chapter 3 of Subtitle D of this Code.

(b) The tax rate shall be four point five percent (4.5%) of the sales price of taxable items and bundled transactions.

(c) There shall be levied, collected, and paid, a tax on business to business services or designated professional services as defined in Subtitle D of this Code rendered after September 30, 2015, but before April 1, 2016. The applicable tax rate shall be four percent (4%). Provided, that the exemptions provided in Chapter 3 of Subtitle D of this Code shall apply to the tax established

in this subsection inasmuch as they apply to taxable services under subsections (a) and (b) of this Section.

(d) The tax established in subsection (a) of this Section shall apply to the sale of the same taxable items subject to the sales tax established in Subtitle D of this Code, and shall be collected, remitted, and paid in the same form and manner as, and together with the sales tax established in Subtitle D of this Code. For purposes of this Section, the definitions established in Subtitle D of this Code shall be used.

#### Section 4210.02.- Consumption Surtax - Use Tax

(a) There shall be levied, collected, and paid, at the rates established in this Section and in addition to the sales and use tax established in Subtitle D of this Code, a tax on the use, storage or consumption of a taxable item in Puerto Rico carried out after June 30, 2015, but before April 1, 2016, unless the taxable item has been subject to the sales tax under Sections 4020.01 and 4210.01 of this Code.

(b) The tax rate shall be four point five percent (4.5%) of the sales price of a taxable item and bundled transactions.

(c) There shall be levied, collected, and paid, a tax on business to business services or designated professional services as defined in Subtitle D of this Code rendered after September 30, 2015, but before April 1, 2016, insofar as it is not subject to the sales and use tax provided in Sections 4020.01 and 4210.01 of this Code. The applicable tax rate shall be four percent (4%). Provided, that the exemptions provided in Chapter 3 of Subtitle D of this Code shall apply to the tax established in this subsection inasmuch as they apply to taxable services under subsections (a) and (b) of this Section.

(d) The tax established in subsection (a) of this Section shall apply to the use of the same taxable items subject to the use tax established in Subtitle D of this

Code, and shall be collected, remitted, and paid in the same form and manner as, and together with the use tax established in Subtitle D of this Code.

Section 4210.03.- Consumption Surtax - Value-added Tax

(a) There shall be levied, collected, and paid, at the rates established in this Section and in addition to the value-added tax established in Subtitle DD of this Code, a tax on every taxable item and taxable transaction as defined in Subtitle DD of this Code after April 1, 2016.

(b) The tax rate shall be four point five percent (4.5%) of the value of the taxable item and taxable transaction.

(c) The tax established in this Section shall apply to taxable items and taxable transactions subject to the value-added tax established in Subtitle DD of this Code, and shall be collected, remitted, and paid in the same form and manner as, and together with the value-added tax established in Subtitle DD of this Code. For purposes of this Section, the definitions established in Subtitle DD of this Code shall be used.”

Section 7.- Section 6110.04 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 6110.04.- Effectiveness.-

(a) This Act, known as the ‘Internal Revenue Code for a New Puerto Rico,’ shall take effect on January 1, 2011, with the following provisions:

(1) ...

...

(6) Subtitle DDD.- The provisions of Subtitle DDD shall apply to taxable events occurring after July 1, 2015. Provided, that the Secretary of the Treasury shall be empowered to extend the effective term of Section 4210.01 and Section 4210.02 of this Code if, by March 31, 2016, any of the applicable obligations incurred under the bond issue documents whose source of repayment is the sales and use tax have not been met or the implementation of the operational system to enforce the provisions of Subtitle DD of this Act or any others that may

be approved for such purposes based on the recommendations of the Consumption Tax Transformation Alternatives Commission (CATIC), has not been finished. Said extension shall not exceed a sixty (60)-day term, to be counted as of March 31, 2016.

(7) Subtitle E.- The provisions of Subtitle E shall apply after January 1, 2012.

(8) Subtitle F.-

(A) ...

(B) ...

(b) ...”

Section 8.- Severability Clause.-

If any section, subsection, paragraph, subparagraph, clause and item or part of this Act were held to be null or unconstitutional by a competent court, said holding shall not affect, impair or invalidate the remaining provisions of this Act. For purposes of this Section, each Section of Subtitle DDD, as created by Section 6 of this Act, shall be deemed to be a separate Section.

Section 9.- Section 33 of Act No. 72-2015 is hereby amended to read as follows:

“Section 33.- Consumption Tax Transformation Alternatives Commission (CATIC).-

In light of the fiscal and budgetary realities of the Government, it is hereby provided for the establishment of an evaluation mechanism for the tax system of the Government of the Commonwealth of Puerto Rico.

Said evaluation mechanism shall consist of a Consumption Tax Transformation Alternatives Commission (CATIC), which shall be constituted by the Secretary of the Treasury, who shall be its Chair; the Secretary of Justice, the Director of the Office of Management and Budget; the Executive Director of the

Ports Authority; three (3) Representatives of the House of Representatives of which at least one (1) shall be a member of the parliamentary minority, and three (3) Senators of the Senate of Puerto Rico of which at least one (1) shall be a member of the parliamentary minority to be designated by the Presiding Officers of said Bodies; two (2) representatives of the private business sector; and one representative of the labor union sector of the Island, to be designated by mutual agreement between the Presiding Officers of the House of Representatives and the Senate of Puerto Rico.

...”

Section 10.- Effectiveness.-

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 101-2015 (H. B. 2505)** of the **5<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Section 3 of Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act”; amend Section 2 of Act No. 116-2013, as amended; amend Sections 4020.01, 4020.02, and 4120.01 and add a new Subtitle DDD to Act No. 1-2011, as amended, in order to make reference to the specific tax the revenues of which shall be covered into the Dedicated Sales Tax Fund, clarify the tax rates and surtaxes applicable to the sales and use tax and the value-added tax, and amend Section 33 of Act No. 72-2015, in order to increase the number of legislators designated to the Consumption Tax Transformation Alternatives Commission (CATIC, Spanish acronym); among other things.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 16<sup>th</sup> day of December, 2015.

Juan Luis Martínez Martínez  
Director